

FILED

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

AUG 29 2014

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

GEORGE LEVY, et al.,
Plaintiff,

v.

AERION RENTAL SERVICES, LLC,
Defendant.

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Cause No. SA-14-CV-00580-OLG

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

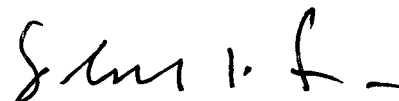
On this date the Court considered Defendant Aerion Rental Services's Motion to Dismiss (docket no. 5). Plaintiff responded thereafter (docket no. 16).

In its motion, Defendant seeks the Court to dismiss this case under Rule 12(b)(5) claiming improper service—specifically, Defendant contends service was improper under Rule 4 because it was effectuated by mail through Plaintiff's own attorney, an interested party. In his response, Plaintiff concedes that due to a clerical error, the summons was initially mailed by certified mail to Mr. Bernard, president of Aerion Rental Services and registered agent for service, from Plaintiff's counsel's office as opposed through a process server. However, Plaintiff notes this error was corrected, as Defendant was subsequently served through a process server by personal service on the same registered agent, Mr. Bernard. The Court has received the executed summons (*see* docket no. 10). Furthermore, the Court agrees that service was properly made within the 120 day period, and due to Plaintiff having shown diligence in attempting to serve Defendant, it has complied with service under Rule 4(m). *See, e.g., Resolution Trust Corp. v. Starkey*, 41 F.3d 1018, 1022 (5th Cir. 1995).

Improper service was the only ground Defendant raised in seeking dismissal of this case. Given the Court's finding that proper service was effectuated on the company's registered agent, the Court hereby DENIES Defendant's motion to dismiss.

It is so ORDERED.

SIGNED this 29 day of August, 2014.



United States District Judge Orlando L. Garcia